

ELECTRONICALLY FILED Pulaski County Circuit Court Terri Hollingsworth, Circuit/Court Clerk 2019-Jul-29 21:40:35 60CV-19-5187 C06D06 : 5 Pages
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1 Tashona Joyner  
2 3600 Holt Street  
2 Little Rock, Arkansas 72204

3 UNITED STATES DISTRICT COURT  
4  
5 EASTERN DISTRICT OF ARKANSAS

6 DIVISION

7 **TASHONA JOYNER,**  
8 **3600 HOLT STREET**  
9 **LITTLE ROCK, ARKANSAS 72204**

Case No.: \_\_\_\_\_

10 Plaintiff,

11 vs.

12 **ARKANSAS BLUE CROSS BLUE SHIELD,**  
13 **601 S. GAINES STREET**  
14 **LITTLE ROCK, ARKANSAS 72203**

15 Defendant

16  
17 **COMPLAINT**

18 **(for discrimination in Violation of Title VII of the Civil Rights Act of 1964,**  
19 **the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990,**  
20 **and HIPAA Act of 1996)**

21 1. This action is brought pursuant to Title VII of the Civil Rights Act of  
22 1964, the Rehabilitation Act of 1973, and the Americans with Disabilities  
23 Act of 1990 for employment discrimination of a person with a disability.  
24 The Plaintiff's privacy of her health information was also violated under  
25 the HIPAA Act of 1996.

26  
27  
28  
COMPLAINT - 1

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AUG 09 2019  
CR - LEGAL

- 1           **2. Plaintiff, Tashona Joyner is and was at all times relevant to this case a**
- 2           **citizen of the United States and resides at 3600 Holt Street, Little Rock,**
- 3           **Pulaski County, Arkansas, 72204, 501-830-7487.**
- 4
- 5           **3. Defendant, Arkansas Blue Cross Blue Shield is and was at all times**
- 6           **relevant to this case a United States citizen and resides at 601 S. Gaines**
- 7           **Street, Little Rock, Pulaski County, Arkansas, 72203, 501-378-2000.**
- 8
- 9           **4. Jurisdiction and venue are proper in this court.**
- 10
- 11           **5. Defendant discriminated against Plaintiff in the manner indicated in**
- 12           **paragraphs 9 and 10 of the complaint on or about April 2, 2018.**
- 13
- 14           **6. Plaintiff filed charges against the defendant with the Equal Employment**
- 15           **Opportunity Commission charging defendant with the acts of**
- 16           **discrimination indicated in paragraphs 9 and 10 of this complaint on or**
- 17           **about May 5, 2018.**
- 18
- 19           **7. The Equal Employment Opportunity Commission issued a Notice of Right**
- 20           **to Sue which was received by Plaintiff on April 25, 2019, a copy of which**
- 21           **notice is attached to this complaint.**
- 22
- 23           **8. Because of Plaintiff's disability, Defendant terminated Plaintiff's**
- 24           **employment.**
- 25
- 26           **9. The circumstances under which the Defendant discriminated against**
- 27           **Plaintiff were as follows:**
- 28
  - **Plaintiff was not aware that she would be terminated for going to**
  - her doctor's appointments since she followed her trainer's**

1                   instructions of notifying them of the appointments beforehand and  
2                   bringing them documentation.

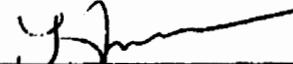
- 3                   • After making request after request, it took over a week to receive  
4                   the job accommodation forms. By the time they were received, the  
5                   Plaintiff had already had all her doctor appointments. She was also  
6                   granted access to the parking deck after turning in form to her  
7                   trainers and Marc Gibson that was filled out by her doctor stating  
8                   that she is permanently disabled.
- 9                   • On April 17, 2018 Plaintiff was terminated by James Johnson.  
10                  When Plaintiff asked why she was being terminated he stated that  
11                  now just isn't a good time for you (Plaintiff). When taking  
12                  Plaintiffs badge, she asked could he let her off the parking deck.  
13                  Mr. Johnson asked why she was on the parking deck and Plaintiff  
14                  said she was allowed access due to physical disability.
- 15                  • On April 19, 2018 Plaintiff met with Mr. Odell (HR director) as  
16                  part of an appeal process. Explained to him what happened, gave  
17                  him copies of her doctor's notes. He stated he would get back with  
18                  her by April 27, 2018 and never did.
- 19                  • After the Plaintiff's termination, on May 3, 2018, James Johnson  
20                  forwarded her email containing ADA job accommodation forms to  
21                  someone else violating her HIPAA rights.

22                  10. The acts set forth in paragraph 9 of this complaint may still be being  
23                  committed by defendant.

1           **11. Plaintiff attaches to this complaint a copy of the charges filed with the**  
2           **Equal Employment Opportunity Commission which charges are submitted**  
3           **as a brief statement of the facts supporting this complaint.**  
4  
5           **WHEREFORE, Plaintiff prays that the Court grant the following relief to**  
6           **the Plaintiff:**

- 7           • Defendant be directed to re-employ Plaintiff.  
8  
9           • Plaintiff requests entry of judgement against the Defendant in the  
10          sum of \$250,000, for costs herein expended, reasonable attorney  
11          fees, and for all other proper relief including punitive damages.

12  
13  
14          23, July,2019

15            
16          \_\_\_\_\_  
17          Plaintiff's Name  
18          3600 Holt Street  
19          Archie Rock, AR 72204  
20          (501) 830-7487  
21  
22  
23  
24  
25  
26  
27  
28

Certificate of Acknowledgement

State of AR

County of Pul

on 7-23-19

(date)

, before me,

Latanya D Christopher

(notary)

personally appeared, Tashona N. Joyner

(signers)

personally known to me

-- OR --

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal

Latanya D Christopher

(notary signature)

My Commission Expires: 10-1-2022



(seal)

ELECTRONICALLY FILED Pulaski County Circuit Court Terri Hollingsworth, Circuit/County Clerk 2019-Jul-29 21:40:35 60CV-19-5187 C06D06 : 4 Pages
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**UNIFORM COVER PAGE**

[To be used when required by Administrative Order No. 2 (g)\*]

COURT: Circuit COURT OF Pulaski COUNTY

Docket/Case Number: \_\_\_\_\_

CASE NAME:

PLAINTIFF/

PETITIONER:

Tashina Jayner

DEFENDANT/

RESPONDENT:

Arkansas Blue Cross Blue Shield

**TITLE OF PLEADING OR  
DOCUMENT BEING FILED**

(If a multi-part file,  
the designation "part \_ of \_"  
(example, part 1 of 2)): \_\_\_\_\_

Exhibit

\*Administrative Order No 2.

(g) *File Mark.* (1) There shall be a two inch (2") top margin on the first page of each document submitted for filing to accommodate the court's file mark. If the pleading or document must be filed in multi-parts because of size or for other reasons, the first page of each part must include the file name and file mark and shall clearly indicate the part number and number of parts (example, part 1 of 2).

(2) If a document is such that the first page cannot be drafted to provide sufficient space to satisfy the file-mark requirement, the document must include the uniform cover page developed by the Administrative Office of the Courts and found under Forms and Publications at [www.arcourts.gov](http://www.arcourts.gov).



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Little Rock Area Office**

820 Louisiana St., Suite 200  
Little Rock, AR 72201  
Intake Information Group: (800) 669-4000  
Intake Information Group TTY: (800) 669-6820  
Little Rock Direct Dial: (501) 324-5061  
FAX (501) 324-5991  
Website: [www.eeoc.gov](http://www.eeoc.gov)

Tashona N. Joyner  
24800 Chenal Pkwy Apt 213  
Little Rock, AR 72223

**Re: Tashona N. Joyner vs. Arkansas Blue Cross Blue Shield  
EEOC Charge No.: 493-2018-01263**

Dear Ms. Joyner:

The enclosed Notice terminates the processing of your charge and gives notice of your right to sue within 90 days. On July 19, 2018, a copy of Respondent's position statement was released to you and you provided a response on September 6, 2018. After receiving your response, all evidence collected during the investigation was thoroughly reviewed. The investigation revealed the following facts:

You alleged that you were denied a reasonable accommodation and discharged because of your disability, in violation of The Americans With Disabilities Act of 1990, as amended.

The evidence shows you were hired on April 2, 2018 for a Customer Service Representative I. You were subjected to a 90-day probationary period that had to be satisfactorily completed. On April 4, 2018 you clocked in five minutes after the start of your shift. On April 6, 2018, you were issued an occurrence for improper use of your personal cell phone. On April 10, 2018, you were absent and incurred an occurrence. On April 13, 2018, you reported to work more than two hours after the start of your shift and received another occurrence. Incurring four or more occurrence during your probationary period subjects a probationary employee to termination. Based on you receiving four occurrences during your probationary period, Sherrie Bradford made the decision to terminate your employment. Bradford was not aware that you have a disability. By you requesting a handicap parking space does not support that you have a disability.

The only factor considered when Bradford determined that termination was warranted was your failure to comply with the company's probationary period requirements.

On April 11, 2018, you emailed Marc Gibson, Human Resources Assistant inquiring about possibly getting closer parking due to a physical disability. On April 11, 2018, Gibson responded and advised that you could begin parking in a specific parking deck the following day. Gibson requested a copy of your state issued handicap tag and document indicating the handicap tag was issued to you. He stated he would accept a scanned copy of your driver's license if it indicated you required handicap access. Although you never provided the necessary paperwork, you were permitted to park in its handicapped parking spaces.

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DISMISSAL AND NOTICE OF RIGHTS**

To: **Tashona N. Joyner**  
**24800 Chenal Pkwy Apt 213**  
**Little Rock, AR 72223**

From: **Little Rock Area Office**  
**820 Louisiana**  
**Suite 200**  
**Little Rock, AR 72201**



*On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(g))*

EEOC Charge No.	EEOC Representative	Telephone No.
<b>493-2018-01263</b>	<b>Johnny L. Glover,</b> <b>Investigator</b>	<b>(501) 324-6475</b>

**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; In other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

**- NOTICE OF SUIT RIGHTS -**  
*(See the additional information attached to this form.)*

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

Enclosures(s)

*William A. Cash Jr./JG*  
**William A. Cash, Jr.,**  
**Area Office Director**

APR 24 2019

*(Date Mailed)*

cc: **Odell Nickelberry**  
**Human Resources Director**  
**ARKANSAS BLUE CROSS BLUE SHIELD**  
**601 South Gaines**  
**Little Rock, AR 72201**

**Russell W. Jackson**  
**Attorney**  
**Ford Harrison**  
**1715 Aaron Brenner Drive Suite 200**  
**Memphis, TN 38120**

**NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA):** The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the new law.*

**If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).**

**“Actual” disability or a “record of” a disability (note: if you are pursuing a failure to accommodate claim you must meet the standards for either “actual” or “record of” a disability):**

- The limitations from the impairment no longer have to be severe or significant for the impairment to be considered substantially limiting.
- In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), “major life activities” now include the operation of major bodily functions, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions; or the operation of an individual organ within a body system.
- Only one major life activity need be substantially limited.
- With the exception of ordinary eyeglasses or contact lenses, the beneficial effects of “mitigating measures” (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) are not considered in determining if the impairment substantially limits a major life activity.
- An impairment that is “episodic” (e.g., epilepsy, depression, multiple sclerosis) or “in remission” (e.g., cancer) is a disability if it would be substantially limiting when active.
- An impairment may be substantially limiting even though it lasts or is expected to last fewer than six months.

**“Regarded as” coverage:**

- An individual can meet the definition of disability if an employment action was taken because of an actual or perceived impairment (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).
- “Regarded as” coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.
- The employer has a defense against a “regarded as” claim only when the impairment at issue is objectively *BOTH* transitory (lasting or expected to last six months or less) AND minor.
- A person is not able to bring a failure to accommodate claim if the individual is covered only under the “regarded as” definition of “disability.”

**Note:** Although the amended ADA states that the definition of disability “shall be construed broadly” and “should not demand extensive analysis,” some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability. For more information, consult the amended regulations and appendix, as well as explanatory publications, available at [http://www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).